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File No.: 101953

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

BWP MEDIA USA INC.,

Plaintiff,

vs.

ONION, INC.,

Defendant(s).

Docket No: 1:13-cv-04220-JMF ECF Case

DEMAND FOR JURY TRIAL

COMPLAINT FOR:

1) COPYRIGHT INFRINGEMENT

BWP Media USA Inc., by and through its undersigned counsel, states and alleges as follows:

**INTRODUCTION**

1. Plaintiff BWP Media USA Inc. ("BWP") provides entertainment-related photojournalism goods and services. In particular, BWP owns the rights to a multitude of photographs featuring celebrities, which it licenses to online and print publications.
2. BWP's portfolio of celebrity photographs is the bread and butter of its business.
3. BWP has obtained U.S. copyright registrations covering many of its photographs, and others are the subject of pending copyright applications.
4. Defendant Onion, Inc. owns and operates a website known as [www.avclub.com](http://www.avclub.com).
5. Without permission or authorization from BWP, Onion, Inc. copied, modified, and displayed BWP's photograph(s) on Onion, Inc.'s website [www.avclub.com](http://www.avclub.com).

6. Onion, Inc. engaged in this misconduct knowingly and in violation of the United States copyright laws.

7. BWP has been substantially harmed as a result of Onion, Inc.'s misconduct.

### **JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction over the federal copyright infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331. The Court has supplemental jurisdiction over the claims arising under state law pursuant to 28 U.S.C. §1367(a) in that the state claims are so related to the claims over which the court has original jurisdiction that they form part of the same case or controversy.

9. This Court has personal jurisdiction over Onion, Inc. because Onion, Inc. maintains its principal place of business in New York County, New York and purposely directs substantial activities at the residents of New York by means of the website described herein.

10. Venue is proper under 28 U.S.C. §1391(a)(2) because Onion, Inc. does business in this Judicial District or because a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

### **PARTIES**

11. BWP is a California corporation and maintains its principal place of business in Los Angeles County, California.

12. On information and belief, Onion, Inc., a corporation with a principal place of business in New York County, New York, is liable and responsible to Plaintiff based on the facts herein alleged.

## **FACTUAL ALLEGATIONS**

### **BWP's Business**

13. BWP provides entertainment-related photojournalism goods and services. In particular, BWP owns the rights to a multitude of photographs which it licenses to online and print publications.

14. BWP has invested significant time and money in building its photograph portfolio.

### **BWP's Copyrights**

15. BWP has obtained U.S. copyright registrations covering many of its photographs, and others are the subject of pending copyright applications.

16. BWP's photographs are original, creative works in which BWP owns protectable copyright interests.

17. BWP owns several active and valid copyright registrations with the United States Copyright Office (the "USCO"), which registrations cover BWP's photographs.

18. BWP also has filed several copyright applications with the USCO, which are presently pending.

19. BWP applied for and received a copyright registration for a collection of photographs, which included the photograph(s) annexed hereto as Exhibit(s) 1 (the "Photograph(s)").

### **Onion, Inc.'s Website**

20. On information and belief, Onion, Inc. is the registered owner of the website located at [www.avclub.com](http://www.avclub.com) (the "Website"). On information and belief, Onion, Inc. operates the Website and is responsible for all Website content.

21. The Website provides, *inter alia*, articles, photographs and other information regarding celebrities.

22. The Website is monetized in that it contains paid advertisements. On information and belief, Onion, Inc. profits from these activities.

### **Onion, Inc.'s Misconduct**

23. Without permission or authorization from BWP, Onion, Inc. copied, modified, and/or displayed the Photograph(s) on the Website, in violation of BWP's copyrights. See Exhibit(s) 1 annexed hereto.

24. On information and belief, the Photograph(s) were copied from the website(s) of BWP's Clients and reposted on the Website without license or permission, thereby infringing on the Copyrights (the "Infringement(s)").

25. On information and belief, Onion, Inc. was aware of facts or circumstances from which the Infringement(s) was/were apparent. Based on this totality of circumstances, Onion, Inc. cannot claim that it is not aware of the widespread infringing activities, including the Infringement(s), on the Website. Such a claim would amount to willful blindness to the Infringement(s) on the part of Onion, Inc.

26. On information and belief, Onion, Inc. engaged in the Infringement(s) knowingly and in violation of United States copyright laws.

27. On information and belief, Onion, Inc. has received a financial benefit directly attributable to the Infringement(s). Specifically, by way of the Infringement(s), Onion, Inc. increased traffic to the Website and, in turn, realized an increase in, its advertising revenues and/or merchandise sales.

28. As a result of Onion, Inc.'s misconduct, BWP has been substantially harmed.

### **FIRST COUNT**

#### **(Copyright Infringement, 17 U.S.C. § 501 *et seq.*)**

29. BWP repeats and incorporates by reference the allegations contained in the preceding paragraphs, as though set forth in full herein.

30. The Photograph(s) are original, creative works in which BWP owns protectable copyright interests.

31. BWP has not licensed Onion, Inc. to use the Photograph(s) in any manner, nor has BWP assigned any of its exclusive rights in the Copyrights to Onion, Inc.

32. Without permission or authorization from BWP and in willful violation of BWP's rights under 17 U.S.C. §106, Onion, Inc. reproduced the Photograph(s).

33. On information and belief, without permission or authorization from BWP and in willful violation of BWP's rights under 17 U.S.C. § 106, Onion, Inc. displayed the Photograph(s) on the Website.

34. Onion, Inc.'s reproduction of the Photograph(s) and display of the Photograph(s) on the Website constitutes copyright infringement.

35. On information and belief, thousands of people have viewed the unlawful copies of the Photograph(s) on the Website.

36. On information and belief, Onion, Inc. had knowledge of the copyright infringement alleged herein and had the ability to stop the reproduction and display of BWP's copyrighted material.

37. Onion, Inc.'s copyright infringement has damaged BWP in an amount to be proven at trial.


#### **PRAYER FOR RELIEF**

**WHEREFORE**, BWP respectfully requests judgment as follows:

1. That the Court enter a judgment finding that Onion, Inc. has infringed on BWP's Copyrights in the Photograph(s) in violation of 17 U.S.C. § 501 et seq.;
2. That the Court award damages and monetary relief as follows:
  - a. Statutory damages against Onion, Inc. pursuant to 17 U.S.C. § 504(c) of \$150,000 per infringement or in the alternative BWP's actual damages and Onion, Inc.'s wrongful profits in an amount to be proven at trial;
  - b. BWP's attorneys' fees pursuant to 17 U.S.C. § 505;
  - c. BWP's costs; and
3. Such other relief that the Court determines is just and proper.

DATED: June 6, 2013

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**REQUEST FOR JURY TRIAL**

Plaintiff hereby demands a trial of this action by jury.

DATED: June 6, 2013

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EXHIBIT# 1 - BWP Media USA Inc. v. Onion, Inc.  
INFRINGEMENT# 1



Photo Owner: BWP Media USA Inc.  
Photo ID Number: 3024027  
Date Taken: 00/00/0000  
Photo Description: Michael Douglas gets into character as Liberace while Matt Damon plays his alleged gay lover on the set of 'Behind the Candelabra' in LA.  
Photo Location: California  
Copyright Application Date: 00/00/0000  
Application Number: 1-834772575  
Copyright Registration Date: 00/00/0000  
Registration Number: VA 1-836-297

Domain: www.avclub.com  
URL: <http://www.avclub.com/articles/this-is-what-michael-douglas-looks-like-as-liberac,83217/>  
Observed Date: 00/00/0000